



WESTFIELD-WASHINGTON
BOARD OF ZONING APPEALS

September 15, 2015

1509-VU-08

Exhibit 1

Petition Number: 1509-VU-08

Subject Site Address: 203 Jersey Street (the "Property")

Petitioner: Penny & Richard Foster (the "Petitioner")

Request: The petitioner is requesting approval for a Variance of Use to allow a barber and beauty shop in the MF1: Multi-Family Low Density District (*Chapter 13: Use Table*).

Current Zoning: MF1: Multi-Family Low Density District

Current Land Use: Residential

Approximate Acreage: 0.25 acre +/-

Exhibits:

1. Staff Report
2. Location Map
3. Existing Conditions Exhibit
4. Petitioner's Statement of Intent
5. Proposed Site Plan & Character Exhibits

Staff Reviewer: Jeffrey M. Lauer, Associate Planner

PETITION HISTORY

This petition will receive a public hearing at the September 15, 2015, Board of Zoning Appeals meeting.

ANALYSIS

Location: The subject property is approximately 0.25 acre +/- in size and located on the south side of Jersey Street, approximately 200 feet west of Mill Street (see **Exhibit 2**). The Property is zoned MF1: Multi-family Low Density District. The Property is improved with a single structure originally constructed as a single-family dwelling and more recently used as a childcare/daycare facility (see **Exhibit 3**). The surrounding properties are all zoned MF1.

Land Use: The Property is currently zoned MF1: Multi-Family Low Density District. As summarized in **Exhibit 4** (the Petitioner's "Statement of Intent"), the Petitioner is requesting a Variance of Use to allow a barber and beauty shop. A barber and beauty shop is a Low Intensity Retail¹ use, as

¹ The UDO defines "Retail, Low Intensity" as "[r]etail businesses that have a low impact on neighboring properties, traffic generation, and public safety. Example businesses include, but are not limited to: art gallery, banks and savings and loans, bakery with limited seating, barber and beauty shop, book store (small), camera store, convenience store (small), craft gallery (small), drug store (small), dry cleaning pick-up, flower shop, gift shop, jewelry store, laundromats and self-service dry cleaning, mail order stores, meat market, news dealer and stationary stores. Generally, a business under eight thousand (8,000) square feet qualifies as small for purposes of this definition.



defined by the Unified Development Ordinance (the “UDO”). A Low Intensity Retail use is not a permitted use in the MF1 District. As a result, this variance of use request has been filed in order to allow this use on the Property.

As shown in **Exhibit 5**, the Petitioner is proposing to use the existing structure and not proposing to construct any new buildings. The Petitioner is also proposing to utilize the interior as it generally exists today, which includes a large meeting room, studio space, a private office and support facilities, such as kitchen/break room, bathroom and mechanicals. The Petitioner’s Statement of Intent (see **Exhibit 4**) further describes the operational characteristics of the proposed use, including hours of operation.

The UDO generally provides the purpose and intent of the MF1 District² is to provide for a variety of attached and multi-family residential dwellings, the MF1 District also permits other nonresidential uses such as assisted living facilities, nursing homes, and childcare/daycare centers. The previous use of this Property was for a childcare/daycare center.

Comprehensive Plan: The Westfield-Washington Township Comprehensive Plan identifies this Property within the “Downtown”³ land use classification. The Downtown area was further studied in 2008 after the formation of the Grand Junction Task Group (the “GJTG”). The study resulted in an amendment to the Comprehensive Plan known as the Grand Junction Master Plan and Addendum, adopted in 2009, and then subsequently the adoption of the Grand Junction Implementation Plan (the “Implementation Plan”), an amendment to the Comprehensive Plan adopted in 2013 (collectively, the “Grand Junction Plan”).

The Grand Junction Plan identifies a long term vision as well as land use and financial investment goals for the intermediate and short terms. The centerpiece of the Grand Junction Plan includes creating public gathering spaces with key public investments opportunities to include: Grand Junction Plaza (currently being designed), new civic facilities, extended trail system and street network, enhanced stormwater management, and signature gateway developments.

The studied land use component of the Grand Junction Plan identified several sub-districts. The Property falls within the area identified as the “Junction Sub-District”. The specific objectives for the Junction Sub-District, as prioritized in the Implementation Plan, include: (i) develop architectural and development standards; (ii) formalize a position with INDOT regarding the SR32 expansion through downtown; (iii) develop standards to address modifications to existing structures; (iv) develop Downtown Westfield Association review process; and (v) develop strategy for attracting/encouraging the following land uses: trail-oriented businesses (i.e. bike

² Article 4.10(A)

³ *Westfield-Washington Township Comprehensive Plan 2007*, pg. 24



shop, coffee shop); dry cleaner; market; specialty shops; night-time gathering places; restaurants; offices⁴.

The Department, in coordination with the GJTG, is working on the prioritized objectives of the Implementation Plan; however, the specific objectives noted above for the Junction Sub-District are still in progress. Current discussions have identified that the Junction Sub-District includes several sub-areas, of which the Park Street and Jersey Street corridors were identified as areas where the adaptive re-use of existing structures⁵ may be desirable to support an eclectic mix of authentic buildings and “village character” that includes interesting shops and cottage industries⁶.

Procedural

Public Notice: The Board of Zoning Appeals is required to hold a public hearing on its consideration of this petition. This petition is scheduled to receive its public hearing at the September 15, 2015, Board of Zoning Appeals meeting. Notice of the public hearing was properly advertised in accordance with Indiana law and the Board of Zoning Appeals’ Rules of Procedure.

Conditions: The UDO⁷ and Indiana Code § 36-7-4-918.4 provide that the Board of Zoning Appeals may impose reasonable conditions and limitations concerning use, construction, character, location, landscaping, screening, and other matters relating to the purposes and objectives of the UDO upon any Lot benefited by a variance as may be necessary or appropriate to prevent or minimize adverse effects upon other property and improvements in the vicinity of the subject Lot or upon public facilities and services. Such conditions shall be expressly set forth in the order granting the variance.

Acknowledgement of Variance: If the Board of Zoning Appeals approves this petition, then the UDO⁸ requires that the approval of the variance shall be memorialized in an acknowledgement of variance instrument prepared by the Department. The acknowledgement shall: (i) specify the granted variance and any commitments made or conditions imposed in granting of the variance; (ii) be signed by the Director, Property Owner and Applicant (if Applicant is different than Property Owner); and (iii) be recorded against the subject property in the Office of the Recorder of Hamilton County, Indiana. A copy of the recorded acknowledgement shall be provided to the

⁴ Grand Junction Implementation Plan, Chapter 6: Implementation Plan Objectives and Action Items (pg. 26).

⁵ *Westfield-Washington Township Comprehensive Plan 2007*, pg. 70

⁶ Cf. *Westfield-Washington Township Comprehensive Plan 2007*, pgs. 74-78

⁷ Article 10.14(I) Processes and Permits; Variances; Conditions of the UDO

⁸ Article 10.14(K) Processes and Permits; Variances; Acknowledgement of Variance of the UDO.



Department prior to the issuance of any subsequent permit or commencement of uses pursuant to the granted variance.

Variance of Use: The Board of Zoning Appeals shall approve or deny variances of land use from the terms of the UDO. A variance of use may be approved under Indiana Code § 36-7-4-918.4 only upon a determination in writing that:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
3. The need for the variance arises from some condition peculiar to the property involved;
4. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and
5. The approval does not interfere substantially with the Comprehensive Plan.

RECOMMENDATION

The general area surrounding the Property (e.g., Main Street to Park Street, and Poplar Street to Mill Street) is experiencing a transition as a result of the improvements to US Highway 31, Grand Park (and its related visitors) and the continuing efforts and interest in revitalizing and enhancing downtown. As a result, the Department believes this request is consistent with what the City anticipates to continue to be an emerging trend for transitional businesses in downtown that contribute to further activity and liveliness.

The Department believes the proposed use is consistent with what the Comprehensive Plan has identified for the Junction Sub-District; however, because the refined vision that will be set forth in a Junction Sub-District addendum is not expected to be completed until 2016, the Department recommends a time limit for the variance of use. Although the proposed use and existing property conditions may be consistent with any future addendum, the time limit allows the City and the Board the ability to revisit the use and market/property conditions to determine whether it is appropriate long term and/or if an alternative zoning process (e.g., change of zoning) may be more appropriate.

The Department recommends approval of 1509-VU-08 with the following condition and findings:

Recommended Conditions:

1. This Variance of Use approval (1509-VU-08) shall expire on September 15, 2017, unless an extension is otherwise granted by the Board of Zoning Appeals.



2. The Variance of Use shall be limited in scope and operation to the Petitioner's Statement of Intent and Site Plan, attached hereto and incorporated herein as **Exhibit 4** and **Exhibit 5**, respectively. Any expansion or substantial alteration to the scope and operation of the Variance of Use, as determined by the Director, shall require approval by the Board of Zoning Appeals.

Recommended Findings for Variance of Use (1509-VU-08):

1. *The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*

Finding: It is unlikely that approving the requested variance of use would be injurious to the public health, safety, morals, and general welfare of the community because the use is consistent with or less intense than the previously permitted use and is a use otherwise permitted in the community by the Unified Development Ordinance. The operation of the use will otherwise be required to comply with or exceed the applicable standards of the Unified Development Ordinance.

2. *The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:*

Finding: It is unlikely that the use and value of adjacent property will be affected in a substantially adverse manner. The proposed variance of use should not have a negative impact on surrounding properties because: (i) the proposed use will be utilizing only those improvements currently existing on the property and will be conducted entirely within the existing structure; (ii) the operations of the proposed use are intended to mitigate the impact, especially traffic, on surrounding residential properties; (iii) the proposed use is less intense than the previously permitted use of a childcare/daycare center; and (iv) the proposed use is consistent with and compatible with the current and anticipated short term character of the surrounding area.

3. *The need for the variance arises from some condition peculiar to the property involved.*

Finding: The Comprehensive Plan and subsequent Comprehensive Plan Addendums have identified an emerging development activity in downtown of the adaptive reuse of existing structures. The existing conditions of the property and surrounding area generally do not lend itself to uses permitted in the MF1 District. The existing conditions do, however, lend itself to the proposed use, which is less intense than other uses the property may otherwise support in its current condition.

4. *The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought.*

Finding: The existing conditions of the property and surrounding area generally do not lend itself to uses permitted in the MF1 District. As a result, the use of the property in its



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current condition for uses otherwise permitted in the MF1 District is restricted and constitutes an unnecessary hardship.

5. *The approval does not interfere substantially with the comprehensive plan.*

Finding: The Comprehensive Plan identifies this property within the Junction Sub-District of the Grand Junction District. The Comprehensive Plan generally recommends land uses within the Junction Sub-District that are trail-oriented, specialty retail, and night-time gathering destinations. The proposed use is consistent with the recommended land uses and offers an opportunity for the viable use of the property in its current condition. The success of short-term or interim uses of existing structures in downtown will contribute to the long-term success and stability of the Grand Junction District, thus the proposed use does not substantially interfere with the Comprehensive Plan.